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May 21, 2015

VIA ELECTRONIC FILING AND FIRST-CLASS MAIL
Federal Communications Commission
Marlene H. Dortch, Secretary
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Atlantic Broadband (Penn), LLC*
MB Docket No. 15-106
CSR No. CSR-8905-E

Dear Madam Secretary:

Enclosed please find an original and four copies of the Mayor and City Council of Cumberland's Response to the Petition for Determination of Effective Competition filed by Atlantic Broadband (Penn), LLC in the above-referenced matter, with one exhibit thereto. Please contact me with any questions regarding the same or if further information is required.

Thank you for your attention and cooperation in this matter.

Very truly yours,

Patrick W. Thomas

Enclosures

cc: Jeffrey D. Rhodes, City Administrator (via electronic mail)

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN THE MATTER OF

*

ATLANTIC BROADBAND (PENN), LLC

*

PSID: 001535

**PETITION FOR DETERMINATION OF
EFFECTIVE COMPETITION**

*

**City of Cumberland, Maryland
CUID: MD0024**

*

Media Bureau Docket No. 15-106

*

CSR No. CSR-8905-E

* * * * *

RESPONSE TO PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION

The Mayor and City Council of Cumberland (the “City”), a Maryland municipal corporation, by its undersigned counsel, hereby files this Response to the Petition for Determination of Effective Competition (the “Petition”) filed by Atlantic Broadband (Penn), LLC (“Atlantic Broadband”) pursuant to 47 C.F.R. §§ 76.7(b)(1) and 76.907 and, in support thereof, states as follows:

1. Pursuant to Chapter 5.5 (Cable Television) of the Cumberland City Code (the “City Code”), § 5.5-3, it shall be unlawful for any person to construct, erect, install, maintain, or operate a cable television system in the City of Cumberland within any public right-of-way without a properly granted franchise issued pursuant to the provisions of Chapter 5.5 of the City Code.

2. Pursuant to § 5.5-43 of the City Code, the City reserves the right to regulate rates for basic cable service and any other services offered over the cable system, to the extent permitted by applicable law. A grantee of a cable television franchise shall be subject to the rate regulation provisions provided for in Chapter 5.5 of the City Code and those of the Federal

Communications Commission (the "FCC"). The City shall follow the rules relating to cable rate regulation promulgated by the FCC.


3. In accordance with the foregoing, the City entered into a Cable Television Franchise Agreement with Atlantic Broadband on July 8, 2008 (the "Franchise Agreement"). (Ex. 1.)

4. The factual assertions set forth in the Petition appear to support Atlantic Broadband's contention that the two-prong competing provider test set forth in 47 C.F.R. § 76.905(b)(2) is satisfied in the subject franchise area, *i.e.*, the corporate limits of the City of Cumberland, Maryland. (*See* Ex. 1 at § 1.01.) The City has no reason to doubt the veracity of the factual assertions set forth by Atlantic Broadband in support of its Petition. Accordingly, the City does not oppose Atlantic Broadband's request for exemption from rate regulation by the FCC at this juncture.

5. The City wishes to participate in the above-captioned matter as the franchising authority and to ensure that the interests of the City and its citizens are adequately represented. The City reserves the right to alter its position with respect to the Petition if new facts are discovered or if the factual assertions set forth in the Petition are discovered to be untrue or inaccurate in any way.

To the best of our personal knowledge, information, and belief, formed after reasonable inquiry, the foregoing Response is well grounded in fact, is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and is not interposed for any improper purpose.

Respectfully submitted,



Charles D. MacLeod, Esq.


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Chestertown, Maryland 21620
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patrick.thomas@fblaw.com
*Attorneys for the Mayor and City Council of
Cumberland*

Dated: May 21, 2015

DECLARATION

I, Jeffrey D. Rhodes, affirm under the penalty of perjury and based upon personal knowledge unless otherwise stated herein the following:


1. I am over 18 years of age, I am of sound mind, and I have never been convicted of a felony or any other crime that calls into question my truthfulness.

2. I am the City Administrator for the City of Cumberland, Maryland.

3. I have reviewed the City's Response to the Petition for Determination of Effective Competition filed in the above-captioned matter by Atlantic Broadband (Penn), LLC.

4. To the best of my personal knowledge, information, and belief, formed after reasonable inquiry, the foregoing Response is well grounded in fact, is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and is not interposed for any improper purpose.

5-20-15
Date


Jeffrey D. Rhodes, ICMA-CM
City Administrator
City of Cumberland, Maryland
57 N. Liberty Street
Cumberland, Maryland 21502
(301) 759-6447
jeff.rhodes@cumberlandmd.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of May, 2015, copies of the foregoing Response to Petition for Determination of Effective Competition and the exhibit thereto were sent via first-class mail, postage prepaid, to the following:


Lisa Chandler Cordell, Esq.
Eric E. Breisach, Esq.
Breisach Cordell PLLC
5335 Wisconsin Avenue, NW, Suite 440
Washington, DC 20015
Attorneys for Atlantic Broadband (Penn), LLC

Steven A. Broeckaert, Esq.
Sr. Deputy Chief, Policy Division
Media Bureau
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445 12th Street, S.W.
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Washington, DC 20554

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Washington, DC 20036
Attorneys for EchoStar Communications Corp.

William M. Wiltshire, Esq.
Harris, Wiltshire & Grannis LLP
1919 M Street, N.W.
Washington, DC 20036
Attorneys for DirecTV, Inc



Patrick W. Thomas, Esq.

City of Cumberland

- Maryland -

RESOLUTION

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND ("CITY"), AUTHORIZING THE EXECUTION OF A CABLE TELEVISION FRANCHISE AGREEMENT WITH ATLANTIC BROADBAND PENN, LLC ("FRANCHISEE").

WHEREAS, the City, pursuant to City of Cumberland Cable Television Franchise Act, Chapter 5.5 of the Cumberland City Code (hereinafter referred to as the "Act" or "Chapter 5.5"), is authorized to grant and renew one (1) or more nonexclusive revocable franchises to operate, construct, maintain and reconstruct a Cable Television System within the City of Cumberland, Maryland; and,

WHEREAS, Franchisee desires to provide, or continue to provide, cable services within the corporate limits of the City of Cumberland, Maryland, and has applied for a franchise in order to do same; and,


WHEREAS, the City has reviewed Franchisee's request and after due evaluation of Franchisee and its application, and after public hearing, has determined that it is in the best interest of the City of Cumberland and its residents to grant a franchise to Franchisee.

NOW, THEREFORE, BE IT RESOLVED THAT, the Mayor and City Council of Cumberland hereby grant to Franchisee a cable television franchise (the "Franchise") in accordance with the provision of Chapter 5.5 and this Franchise Agreement, and in consideration of the City's grant of the Franchise to Franchisee and the promise by Franchisee to provide Cable Service to the residents of the City of Cumberland; and

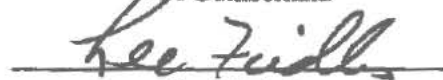
BE IT FURTHER RESOLVED THAT, Jeffrey E. Repp, City Administrator for the City of Cumberland, is hereby authorized to act on behalf of the Mayor and City Council to take all necessary steps to complete the award of the Franchise.

Given under our Hands and Seals this 8th day of July, in the Year 2008, with the Corporate Seal of the City of Cumberland hereto attached, duly attested by the City Clerk.

Attest:


Marjorie A. Eirich
City Clerk

Mayor and City Council
Of Cumberland


Lee N. Fiedler
Mayor

CABLE TELEVISION FRANCHISE AGREEMENT

BY AND BETWEEN

MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND

AND

ATLANTIC BROADBAND PENN, LLC

July ^{8th}____, 2008

CABLE TELEVISION FRANCHISE AGREEMENT

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EXHIBITS

- Exhibit A: Franchise Fee Payment Worksheet
- Exhibit B: Channel Line Up
- Exhibit C: Sites

CABLE TELEVISION FRANCHISE AGREEMENT

THIS CABLE TELEVISION FRANCHISE AGREEMENT (this "Agreement") is made and entered into this 8th day of July, 2008, by and between Mayor and City Council of Cumberland, a body politic and corporate and a municipality of the State of Maryland (the "City" or the "Grantor"), and Atlantic Broadband Penn, LLC, a Pennsylvania limited liability company (the "Grantee" or "Franchisee").

RECITALS

WHEREAS, the City, pursuant to City of Cumberland Cable Television Franchise Act, Chapter 5.5 of the Cumberland City Code (hereinafter referred to as the "Act" or "Chapter 5.5"), is authorized to grant and renew one (1) or more nonexclusive revocable franchises to operate, construct, maintain and reconstruct a Cable Television System within the City of Cumberland, Maryland; and

WHEREAS, Franchisee desires to provide, or continue to provide, cable services within the corporate limits of the City of Cumberland, Maryland and has applied for a franchise in order to do same;

WHEREAS, the City has reviewed Franchisee's request and after due evaluation of Franchisee and its application, and after public hearing, has determined that it is in the best interest of the City of Cumberland and its residents to grant a franchise to Franchisee.

NOW THEREFORE, the Mayor and City Council of the City of Cumberland, Maryland hereby grant to Franchisee a cable television franchise (the "Franchise") in accordance with the provisions of Chapter 5.5 and this Franchise Agreement, and in consideration of the City's grant of the Franchise to Franchisee and the promise by Franchisee to provide Cable Service to the residents of the City of Cumberland, the parties hereto agree as follows:

ARTICLE 1 RENEWAL OF FRANCHISE

SECTION 1.01. Grant of Rights.

A Cable Television Franchise is hereby granted, subject to the terms and conditions of this Agreement. The grant of Franchise provides Grantee with the authority, right and privilege, to construct, reconstruct, operate and maintain a Cable Television System and to provide cable service and any other service permitted by this Franchise within the Streets and Public-Rights-of-Way in the City of Cumberland as it is now or may in the future be constituted.

SECTION 1.02. Right of Grantor to Issue and Renew Franchise.

Grantee acknowledges and accepts the right of Grantor to issue and/or renew a Franchise Agreement and Grantee agrees it shall not, now or at any time hereafter, challenge any lawful exercise of this right in any local, State or federal court. This is not, however, a waiver of any constitutional or legal right or privilege on the part of the Grantee.

SECTION 1.03. Effective Date of Franchise.

This Franchise shall be effective on the later to occur of (i) the Franchisee having executed this Franchise Agreement; and (ii) this Franchise Agreement having been approved and executed by and on behalf of the Grantor in its normal course of business and in compliance with its laws and regulations regarding the execution of agreements; provided that said date is no later than fifteen (15) days after the date that the City, by resolution or otherwise, approves this Franchise Agreement. The Franchise is further contingent upon the Grantee's filing, with the City Administrator, the executed Franchise Agreement and the required security fund and insurance certificates, except that if the filing of the security fund or any such insurance certificate does not occur within sixty (60) days after the effective date, the Grantor may declare this Franchise null and void.

SECTION 1.04. Duration.

This Franchise Agreement shall commence upon its effective date and shall expire on the tenth (10th) anniversary thereof, unless renewed, revoked, or terminated sooner as herein provided.

SECTION 1.05. Written Notice.

All notices, reports or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to the person designated below, or when five (5) days have elapsed after it is deposited in United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City: City Administrator
 City of Cumberland
 57 N. Liberty Street
 P.O. Box 1702
 Cumberland, Maryland 21502

If to Grantee: General Manager
 Atlantic Broadband Penn, LLC
 320 Bailey Avenue
 Uniontown, Pennsylvania 15401

And: Donna Garofano
 Vice President
 1 Batterymarch Park, Suite 405
 Quincy, MA 02129

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

SECTION 1.06. Franchise Not Exclusive.

This Franchise shall not be construed as any limitation upon the right of the City, through its proper offices, and in accordance with applicable law, to grant to other Persons rights, privileges, or authority similar to or different from the rights, privileges, and authority herein set forth, in the same or other Streets and Public-Rights-of-Way or public places or other places the City is entitled to occupy by this Agreement, permit or otherwise; provided, however, that such additional grants shall not operate to materially modify, revoke or terminate any rights granted to Franchisee herein and shall be in accord with the provisions of Chapter 5.5.

SECTION 1.07. Conflict with Cable Television Franchising Ordinance and Reservation of Rights.

The provisions of Chapter 5.5 of the Cumberland City Code, as amended, are incorporated herein by reference as if set out in full and form part of the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the provisions of Chapter 5.5, then Chapter 5.5 shall control, except as may be specifically otherwise provided in this Agreement. Grantor and Grantee each reserves all the rights that they may possess under law unless expressly waived herein.

SECTION 1.08. Definitions.

Except as otherwise provided herein, the definitions and word usage set forth in Chapter 5.5 are incorporated herein and shall apply in the Agreement. In addition, the following definitions shall apply for the purposes and duration of this Agreement:

(a) **"Applicable Law"** means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations, including, but not limited to, FCC resolutions, orders, rule, and regulations, the Cumberland City Code, and all administrative and judicial decisions interpreting these sources of law.

(b) **"Cable Service"** means the definition as determined by an act of the United States Congress, under the Cable Act or otherwise, or by the FCC, as may be amended from time to time.

(c) **"Gross Revenue"** means any and all revenues or consideration of any kind or nature that constitutes revenue within generally accepted accounting principles (including without limitation, cash, and credits,) actually received by Grantee, from the provision of Cable Service over the Cable System within the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for any basic, optional, premium, per-Channel, per-program service, or other Cable Service; Installation, disconnection, reconnection and change-in-service fees; leased access Channel fees; revenues from rentals or sales of Converters and/or other equipment. Gross Revenues shall not include:

(1) To the extent consistent with generally accepted accounting principles, actual bad-debt write-offs; or

(2) Any taxes or fees, including the Franchise Fee, on services furnished by a Grantee which are imposed directly on any Subscriber or User by the State of Maryland, Allegany County or other governmental unit and which are collected by the Grantee on behalf of said governmental unit.

ARTICLE 2 GENERAL REQUIREMENTS

SECTION 2.01. Governing Requirements.

Grantee shall comply with all lawful requirements of this Agreement, the Act and Applicable Law.

SECTION 2.02. Franchise Fee.

The Grantee shall pay to the Grantor an annual Franchise Fee of five percent (5%) of Grantee's Gross Revenues (as defined in the Act). The Franchise Fee shall be payable quarterly by April 30, July 31, October 31 and January 31 for the preceding three (3) month periods. Each payment shall be accompanied by a brief report set forth as a Franchise Fee Payment worksheet attached hereto as Exhibit A showing the basis for the computation and such other relevant facts as may be required by the City. The Grantor is entitled to inspect such reports and Grantee's books and records as provided in §5.5-27 and §5.5-29 of Chapter 5.5. Grantee shall not bundle its Cable Services with non-Cable Services so as to intentionally reduce or evade the imposition of the Franchise Fee. Grantor acknowledges that it has no lawful right to interfere in any way with Grantee's marketing of its products or services.

SECTION 2.03. Recovery of Processing Costs.

(a) During the term of this Franchise, if the Grantee, pursuant to §5.5-28 of Chapter 5.5, initiates a request for approval regarding the transfer of this Franchise or change in Control of the Grantee, the Grantee shall reimburse the Grantor for all reasonable out-of-pocket costs up to Five Thousand Dollars (\$5,000.00), including attorney and consultant fees and costs, incurred by the Grantor as part of Grantor's review and processing of Grantee's request. Payments of such costs and expenses shall not be deemed to be "Franchise Fees" within the meaning of §622 of the Cable Act (47 U.S.C. §542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the City by Grantee pursuant to Section 2.02 hereof; or (ii) part of the compensation to be paid to the City by Grantee pursuant to Section 2.02 hereof.

(b) To aid in the analysis and resolution of any future disputed matters relative to this Agreement, the Grantor and Grantee may, by mutual agreement (both as to whether to hire and whom to hire), employ the services of technical, financial or legal consultants as mediators. All reasonable fees of the consultants incurred by the parties shall be at the respective parties' cost and not borne by the other party.

(c) This Section shall not apply to any sale, assignment or transfer to one or more purchasers, assignees or transferees which are Affiliates as defined in §5.5-2 of Chapter 5.5.

SECTION 2.04 Insurance.

(a) At all times during the term of this Franchise, the Grantee shall, at its sole expense, take out and maintain worker compensation insurance meeting Maryland's statutory requirements and employer liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) for each accident; and Franchisee shall provide a certificate of coverage to Grantor in accordance Title 9, §9-105(a) of the Md. Labor and Employment Code Ann. (1999 Repl. Vol., 2004 Supp.). Grantee shall require any subcontractor similarly to provide workers compensation insurance for all of subcontractor's employees, all in compliance with State law, and to fully protect the Grantor from any and all claims arising out of occurrences on the work. Grantee hereby indemnifies Grantor for any damage resulting to it from failure of either Grantee or any subcontractor to take out and maintain such insurance.

(b) At all times during the terms of this Franchise, the Grantee shall, at its sole expense, take out and maintain comprehensive commercial general liability insurance with a company licensed to do business in the State of Maryland with a rating by Best of not less than "A" that shall protect the Grantee, the Grantor, and the Grantor's officials, officers, employees and agents from claims which may arise from operations under this Agreement, whether such operations are by the Grantee, its officials, officers, directors, employees and agents, or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's automobiles, products, and completed operations. The amount of insurance for combined single limit coverage applying to bodily and personal injury and property damage shall not be less than Five Million Dollars (\$5,000,000). The following endorsements shall attach to the liability policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The Grantor shall be named as an additional insured on the policy.
- (5) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance effected by the Grantor will be called upon to contribute to a loss under this coverage.
- (6) Standard form of cross-liability shall be afforded.
- (7) An endorsement stating that the policy shall not be canceled without thirty (30) days written notice of such cancellation given to the Grantor.

(c) Grantor reserves the right to review and to adjust the coverage limit requirements, in its reasonable discretion after consulting with Franchisee, no more frequently than every four (4) years.

(d) Grantee shall submit to Grantor documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

(e) Any deductible or self-insured retention must be declared to Grantor, and shall be approved by Grantor in its reasonable discretion after consultation with Franchisee.

SECTION 2.05. Grantee's Insurance - Construction.

Grantee shall not commence any Cable System construction or reconstruction work or permit any subcontractor to commence work until both shall have obtained or caused to be obtained all insurance required under this Agreement and by law. Said insurance shall be maintained in full force and effect until the completion of reconstruction, and approval thereof by the Grantor.

SECTION 2.06. Affiliate Joint Coverage.

Franchisee may acquire, purchase, participate in, or otherwise provide all insurance coverages required in Section 2.04 by, through, or under any policy acquired or purchased by, through, or for the benefit of Franchisee and its Affiliates where coverage provided to Franchisee as part of any such insurance coverage considered in its entirety provides a commensurate level of overall coverage and acceptable risk in the reasonable discretion of the City, given the amount of coverage provided and the number of entities insured thereunder.

SECTION 2.07. Indemnification.

The Grantee shall, at its sole cost and expense, indemnify and hold harmless the City and its respective elected and appointed officials, officers, boards, commissions, employees and agents (hereinafter referred to as "Indemnitees"), from and against:

(a) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by, or be asserted against the Indemnitees by reason of any act or omission of a Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of a Cable System caused by the negligent actions of Grantee, its subcontractors or agents or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

(b) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of

attorneys, expert witnesses and other consultants), which are imposed upon, incurred by, or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to a Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of a Cable Television System caused by Grantee, its subcontractors or agents. Upon the written request of the City, Grantee shall cause such claim or lien to be discharged or bonded within thirty (30) days following such request.

(c) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by, or asserted against the Indemnitees by reason of any financing or securities offering by Grantee or its Affiliates for violations of the common law or any laws, statutes, or regulations of the State of Maryland or the United States, including those of the federal securities and exchange commission, whether by the Grantee or otherwise; excluding therefrom, however, claims which are solely based upon and shall arise solely out of information supplied by the City to the Grantee in writing and included in the offering materials with the express written approval of the City prior to the offering.

(d) Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified here under, a Grantee shall, upon notice from any of the Indemnitees, at the Grantee's sole cost and expense, resist and defend the same with legal counsel mutually acceptable to the City Attorney and Grantee provided further, however, that the Grantee shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of the City Attorney or the City Attorney's designee. The City and Indemnitees shall not settle without Grantee's consent.

(e) Notice, Cooperation and Expenses. The City shall give a Grantee prompt notice of the making of any claim or the commencement of any action, suit, or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the City from cooperating with Grantee and participating in the defense of any litigation through the City Attorney. A Grantee shall pay all reasonable expenses incurred by the City in defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the City Attorney if such service is determined necessary and appropriate by the City Attorney. No recovery by the City of any sum under a letter of credit, surety bond, performance bond or security deposit shall be any limitation upon the liability of the Grantee to the City under the terms of this section, except that any sum so received by the City shall be deducted from any recovery which the City might have against the Grantee under the terms of this section.

(f) Non-waiver of Statutory Limits. Nothing in this Franchise Agreement is intended to express or imply a waiver of the statutory provisions, of any kind or nature, as set forth in state statutes, including the limits of liability of the City as exists presently or may be increased from time to time by the State legislature.

SECTION 2.08. Security Fund.

(a) Upon the effective date of this Franchise, and continuing through the life of the Franchise, Grantee shall establish and provide to Grantor a security fund, as security for the faithful performance by Grantor of all material provisions of this Agreement. The security fund shall be in the amount of Fifty Thousand Dollars (\$50,000) and it shall be in the form of an irrevocable letter of credit or performance bond ("Instrument"). The Instrument shall be drawable on directly by the City in its sole direction for payment of liquidated damages, provided, however, the City shall give simultaneous notice to Grantee of its drawing down of said security fund and the reasons therefore. Grantee shall replenish the security fund every time a draw-down occurs so as to maintain at all times the full Fifty Thousand Dollars (\$50,000). The form of the Instrument shall be acceptable to the Grantor's City Attorney.

(b) The Instrument may be drawn on by Grantor for those purposes specified in Section 2.09(b) hereof, according to the procedures of Section 2.09.

(c) In the event that Grantee shall undertake a construction or reconstruction project or series of projects in the City with respect to the Cable System in an amount of Two Million Dollars (\$2,000,000.00) or more in any twenty-four (24) month period, Grantee shall notify the City of the particulars thereof and the City, in its reasonable discretion, shall have the right to demand that Grantee obtain a construction bond or other security with respect to said project in favor of the City, in form and substance satisfactory to the City in its reasonable discretion.

(d) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's Streets and Public Rights-of-Way or otherwise.

SECTION 2.09. Procedure for Remedying Franchise Violations.

(a) The procedures for remedying Franchise violations or breaches shall be consistent with the provisions of Chapter 5.5, Section 5.5-42.

(b) In the event that the Mayor and City Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner, or has not diligently commenced correction of such violation, the City may impose liquidated damages, payable from the Security Fund established under Section 2.08 herein, of up to One Hundred Dollars (\$100) per day or per incident for all other violations, provided that all violations of a similar nature occurring at the same time shall be considered one (1) incident.

(c) If the Grantor elects to assess liquidated damages, then such election shall constitute the Grantor's exclusive remedy for a period of thirty (30) days. Thereafter, if Grantee remains in non-compliance with the requirement of its Franchise, then the Grantor may pursue any available remedy.

SECTION 2.10. Annual Report.

In addition to the reporting requirements of Chapter 5.5, Grantee, within sixty (60) days after the close of each calendar year shall submit a written annual report for such year to Grantor of services, changes, customer service, and operational and ownership changes.

ARTICLE 3
SYSTEM CAPABILITIES AND REQUIREMENTS

SECTION 3.01. General.

(a) The Cable System shall provide a capacity of at least eighty (80) channels of video programming as reflected in Exhibit B on an analog basis, and thirty (30) channels on a digital format, subject to Section 3.09 (Regional Parity), below, using a fiber optic infrastructure and fiber to node architecture.

(b) It is understood that technology is changing rapidly. Therefore, Grantee may utilize other/additional technology provided that such technology maintains or upgrades the System design and capacity.

(c) Upon the execution hereof, Grantee shall notify the Grantor of the number of channels and types of services it offers and intends to offer on the Cable System. Grantee shall notify Grantor in writing within thirty (30) days of any change in the number of channels or types of services offered.

(d) Grantee shall provide Cable Service in accordance with the Act to all eligible areas.

SECTION 3.02. Emergency Alert Capability.

(a) Grantee shall provide the system capability to transmit an emergency alert signal consistent with FCC requirements to all participating Subscribers in the form of a video override capability and "text crawler" messaging capability to permit Grantor to interrupt and cablecast a video message on all channels simultaneously in the event of disaster or public emergency.

(b) The System shall be operated by Franchisee in compliance with the Emergency Alert System ("EAS") requirements of the FCC so that emergency messages may be distributed over the System. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the Maryland State EAS Plan. In accordance with the Maryland State EAS Plan, Franchisee will override the audio and video on all channels, so long as it is consistent with Franchisee's contractual commitments, to transmit EAS alerts received from the designated local primary sources assigned by the Maryland State EAS Plan to serve the franchise area.

(c) Grantor shall from time to time designate a primary official who directly, or by designation of an alternate, shall have the responsibility for determining whether a local emergency sufficient to activate an emergency broadcast in accordance herewith shall exist.

Until notified by the Grantor of a change in designation, the Grantor hereby designates the Cumberland Chief of Police as the primary official for purposes of this Section 3.02.

(d) In the interest of efficiency and to avoid unnecessary redundancies, Grantor and Grantee agree to coordinate to the extent practicable the implementation and enforcement of the emergency alert capabilities with the County Commissioners of Allegany County (the "County"), who are party to separate cable television franchise agreement with Grantee.

SECTION 3.03. Standby Power.

Grantee shall provide standby power generating capacity at the cable communications System control center capable of providing at least three (3) hours of emergency supply. Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

SECTION 3.04. Parental Control Lock.

Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any channels offered by Grantee.

SECTION 3.05. Status Monitoring.

Grantee shall provide an automatic status monitoring System or a functional equivalent when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

SECTION 3.06. Technical Standards.

The Federal Communications Commission ("FCC") Rules and Regulations, Part 76, Subpart K (Technical Standards), as may be amended from time to time shall apply, to the extent permitted by applicable law.

SECTION 3.07. Right of Inspection.

Grantor shall have the right to inspect all construction, reconstruction or installation work performed by Grantee under the provisions of the Franchise and other pertinent provisions of law, to ensure Grantee's compliance and to protect the public health, safety and welfare of Grantor's citizens. Grantee shall have the right to be present at such inspections.

SECTION 3.08. Periodic Evaluation and Review.

Grantor and Grantee acknowledge and agree that the field of cable television is a rapidly changing one that may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise Agreement. Therefore, to provide for the maximum degree of flexibility in this Franchise Agreement, and to help achieve a continued, advanced and modern Cable System, the following evaluation and review provisions will apply:

(a) The Grantor shall conduct evaluation and review sessions in accordance with §5.5-35 of Chapter 5.5 during the term of this Agreement and Grantee shall cooperate in such review and evaluation. Upon reasonable determination by the Grantor that extraordinary or excessive service related problems or other concerns exists which have not been remedied after good faith efforts to resolve said problems or concerns, Grantor may conduct addition evaluation and review sessions in its reasonable discretion, and Grantee shall cooperate with and in sessions as required for the scheduled sessions under the Act. Grantee acknowledges that all review and evaluation sessions are public in accordance with the Act and Applicable Law.

(b) Topics that may be discussed at any evaluation and review session include, but are not limited to, rates, channel capacity, the System performance, programming, PEG access, the City's uses of cable, Subscriber complaints, judicial rulings, FCC rulings and any other topics that the City or Grantee may deem relevant.

(c) During an evaluation and review session, Grantee shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may request to perform the evaluation and review.

(d) If at any time, the City reasonably believes that there is evidence of inadequate technical performance of the Cable System, the City may require Grantee, at Grantee's expense, to perform reasonable and appropriate tests and analyses directed toward such suspected technical inadequacies. In making such requests, the City shall describe and identify as specifically as possible the nature of the problem and the type of test that the City believes to be appropriate. Grantee shall cooperate fully with the City in performing such tests and shall report to the City the results of the tests, which shall include at least:

- (1) a description of the problem in the System performance which precipitated the special tests;
- (2) the System component tested;
- (3) the equipment used and procedures employed in testing;
- (4) the method, if any, by which the System performance problem was resolved; and
- (5) any other information pertinent to said tests and analyses.

(e) As a result of an evaluation and review session, the City or Grantee may determine that a change in the Cable System or in the terms of the Franchise Agreement may be appropriate. In that event, either the City or the Grantee may propose modifications to the System or the Franchise. Grantee and the City shall, in good faith, review the terms of the proposed change and any proposed amendment to this Franchise Agreement and seek to reach agreement on such change or amendment when the change or amendment is not inconsistent with the terms of the Franchise Agreement, or with applicable law or regulations, and the change or amendment is technically feasible, economically reasonable and will not result in a material alteration of the rights and duties of the parties under the Franchise Agreement.

(f) Proprietary and Confidential Information.

(1) General. Access by the City to any document, records, or other information supplied, or required to be supplied, by the Franchisee to the City under this Agreement shall not be denied by the Franchisee on the grounds that such documents, records, or other information are asserted by the Franchisee to contain confidential or proprietary information; provided that this provision shall not be deemed to constitute a waiver of the Franchisee's right, pursuant to the Maryland Public Information Act, Md. State Government Code, Title 10, Subtitle 6 ("MPIA"), as amended, or any successor thereto, to assert that such documents, records, or other information should be prevented from disclosure under the MPIA. To invoke any review of such a claim with respect to such documents, the Franchisee shall physically mark each page of such document in a manner that conspicuously indicates that the Franchisee believes such page contains confidential or proprietary information and submit a cover letter claiming such confidential or proprietary treatment at the same time.

(2) Requests for Franchisee Information. The City agrees to advise timely the Franchisee of any request by any person, other than a City official or City employee in the performance of such City official's or City employee's duties, seeking to review or obtain such documents. In the event that the City determines that the documents are disclosable under the MPIA, the City shall timely advise the Franchisee, and allow the Franchisee to challenge the disclosure of such documents at the Franchisee's own expense. If the Franchisee's challenge of the disclosure is unsuccessful, the Franchisee, in addition to its own expenses, shall indemnify, defend, and hold harmless the City, and its officials and employees, of and from all costs and damages related to the challenge, including reasonable attorney fees. If the City determines that the documents are not disclosable under the MPIA, the City shall not disclose such documents, and shall advise the requester of the basis for such non-disclosure and requester's rights under the MPIA, and shall advise timely the Franchisee of any challenge by the requester to such action.

(3) Actions to Disclose. The Franchisee and the City each agree to provide the other, upon written request, with copies of all pleadings, court filings, and non-privileged correspondence relating to the defense of any action brought to disclose documents under the MPIA.

SECTION 3.09. Regional Parity.

(a) If the Grantee or an Affiliate provides a new Cable Service on a commercially deployable basis in the Region, then the Grantee, within eighteen (18) months, shall provide such Cable Service on the System unless the Grantee reasonably determines and demonstrates in writing to the Grantor, within twelve (12) months of such commercial deployment, that providing that item of Cable Service would not be Economically and Technically Feasible and Viable, as defined in Section 3.09(c) hereof. Nothing in this Section 3.09 shall require identity or uniformity of programming throughout the Region.

(b) For purposes of this Section 3.09 and Article 5 hereof, "Region" means Somerset and Bedford Counties in Pennsylvania, and Allegany, Washington, and Garrett Counties in Maryland.

(c) For purposes of this Section 3.09, "Economically and Technically Feasible and Viable" means capable of being provided through technology that has been demonstrated to be feasible for its intended purpose, in an operationally workable manner, and in a manner whereby the Cable System has a reasonable likelihood of being operated on reasonably profitable terms.

ARTICLE 4 SERVICES AND PROGRAMMING

SECTION 4.01. Programming.

(a) Broad programming categories. Grantee shall provide or enable the provision of at least the following initial broad categories of programming:

- (1) Educational programming;
- (2) News & Information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts; culture and performing arts;
- (7) Foreign language;
- (8) Science/documentary;
- (9) Weather information;
- (10) National, state and local government affairs; and
- (11) Permissible local broadcast programming which meets the "must carry" requirements of the FCC.

(b) Deletion or reduction of programming categories.

(1) Grantee shall not delete or so limit as to effectively delete any broad category of programming identified in Section 4.01(a) and within its control without the consent of the City or as otherwise authorized by law.

(2) The mix and quality of services provided by the Grantee on the effective date of this Franchise Agreement shall be deemed the mix and quality of services required under this Franchise throughout its term.

SECTION 4.02. Leased Commercial Access.

Grantee shall offer leased commercial access on reasonable terms and conditions and according to applicable law.

SECTION 4.03. Periodic Subscriber Survey.

(a) Commencing on October 1, 2008, and on every fifth anniversary thereof, so long as this Franchise or a renewal thereof is in effect, Grantee shall conduct, and subsequently provide to the Grantor within sixty (60) days thereafter the results of, a Subscriber survey. Each survey questionnaire shall be prepared and conducted in good faith so as to present reasonably reliable measures of Subscriber satisfaction with:

- (1) signal quality;
- (2) response to Subscriber complaints;
- (3) billing practices;
- (4) program services; and
- (5) installation practices.

(b) As a part of each annual report, Grantee shall provide the Grantor with a summary of the results of any survey undertaken pursuant hereto, sufficient for the Grantor to make a reasonable determination of Subscriber satisfaction and concerns, and, to the extent that such information is not confidential, such underlying survey response information as the Grantor may request. Grantee shall report in writing what steps Grantee is taking to implement corrections or improvements, if any, suggested by the responses to such surveys.

(c) Upon the written request of Grantee submitted not less than sixty (60) days prior to the date for such a survey pursuant Section 4.03(a) hereof, the City, in its sole discretion, may waive or modify the requirements of this section. Grantee, in any such request, shall provide a basis and justification for its request.

(d) Grantor may request additional or other surveys of Grantee's performance if, in the reasonable discretion of the Grantor, an additional review session pursuant to the Act and Section 3.08 hereof is required.

**ARTICLE 5
SUPPORT FOR LOCAL CABLE USAGE**

SECTION 5.01. Cable Network.

(a) Grantee shall make available capacity, both upstream and down stream on its Cable System sufficient to provide Cable Services to both residential and non-residential users. Such capacity shall be known as the "Cable System."

(b) Cable Services will, upon request of the City, be made available to those City buildings and facilities set forth in Exhibit C ("Sites"). Connection and access to the Cable System shall be provided to Sites within ninety (90) days of the City's request. One drop per Site shall be made without charge for installation of up to one hundred and fifty (150) feet. The City shall be responsible for selecting, purchasing, installing and maintaining any premises equipment necessary for individuals at the Sites to use the Cable System.

(c) Grantee shall not charge the City for the provision of Basic Cable Television Services provided to those City buildings and facilities set forth in Exhibit C.

(d) Grantees' obligation to provide Cable Services to the Sites hereunder shall be subject to the following conditions: receipt of all necessary federal, State and local permits, licenses and authorizations to provide Cable Services in the City and the ability for Grantee and the City to comply with all applicable federal, State and local laws, rules and regulations.

(e) Grantee will not pass through, as an external cost to residential subscribers of the Cable System, the cost of providing Cable Services to the Grantor Sites.

SECTION 5.02. Public, Educational or Government Access Facilities.

(a) Grantee shall make available to each of its subscribers who receive some or all of the services offered on the System, reception of at least two (2) access channels, which shall be used for non-commercial purposes as follows: one (1) channel for educational programming, and one (1) channel for government access and public access programming. Such channels shall be made available to all Subscribers located within the Franchise area, and may be made available outside the Franchise area.

The access channels shall be made available by Grantee for use by the City and its citizens in accordance with the rules and procedures established by the City or any lawfully designated person, group, organization or agency authorized by the City for that purpose. Grantee will provide the channels on the Basic Cable Television Service tier unless otherwise provided in Federal, State laws or regulations.

(b) Grantee shall dedicate an additional channel for public, educational or governmental access upon the City's request if any access channel is in Continuous Use.

(1) For purposes of this provision Continuous Use shall be defined as the use of the channel with programming that is at least sixty (60%) percent original non-repetitive programming broadcast from 8:00 a.m. to 11:00 p.m., seven days a week for three consecutive months. Text or character generated programming shall not be considered "Continuous Use" for purposes of this Agreement.

(2) The access channels shall be considered separately. Continuous use of one channel to capacity as defined in this Section is sufficient to initiate a request for an additional channel for that purpose only.

(3) In no event shall Grantee be required to provide in excess of four (4) access channels total.

(4) To the extent that any access channel is not being used for the provision of non-commercial, public, educational or governmental access purposes, Grantee shall be permitted to use such channel(s) for the provision of other services subject to any reasonable rules established by the City regarding such use.

Grantee's permitted use of any access channel made pursuant to this Section shall cease within ninety (90) days of Grantee's receipt of notice from City that such channel will again be used for PEG access.

(c) Notwithstanding the above, Grantee may accommodate a request from the City for additional access capacity made pursuant to Section 5.02(b) by combining more than one access use on a channel provided that:

(1) It is technically and economically feasible for Grantee to do so;

(2) The scheduling needs of all users of the channel can be reasonably accommodated; and

(3) The access entity, which requires use of the alternate channel, must be able to access the alternate channel from the site where it normally originates playback of its programs and may not be required to transport tapes to a remote site for playback.

(d) Origination Points. Grantee shall provide cable transmission facilities (hereinafter "Access Facilities") at the below listed origination points for activated return capability. Grantee shall also provide modulation equipment to introduce programming onto these transmission facilities by linking the below listed origination points with the headend, or through hubs to the headend, for distribution to all subscribers generally and for distribution to discrete audiences via scrambled signals and decoders. The origination points are as follows:

(1) Allegany County Board of Education
(108 Washington Street)

(2) Center for Career & Technical Education (Vo-Tech Center)
(14211 McMullen Hwy, SW)

Costs of providing said Access Facilities shall not be a credit against payment of the Franchise Fee imposed under this Agreement or a credit against the capital grant provided for in this Agreement, except as provided for in Section 5.02(e).

(e) Access Equipment and Facilities.

(1) Grant Program. Within forty-five (45) days of the execution of this Agreement, Grantee shall pay Grantor the sum of Ten Thousand Dollars (\$10,000). Additionally, Grantee shall pay Grantor the sum Six Thousand Dollars (\$6,000) on the first anniversary of this Agreement. The grant shall be used by Grantor to purchase, repair, and

replace PEG Access Facilities in cooperation and coordination with the County.

(2) Grantor's Responsibility for Access. The Grantor shall be responsible for the provision, and operation of the Access Facilities and equipment. In this regard Grantor may delegate from time to time its responsibilities to others who then shall assume the responsibility of Grantor in accordance with the Grantor's delegation.

(3) The Grantor will develop reasonable rules regarding use of Access Facilities and equipment and determine the needs of the City for PEG access services. In this regard, the Grantor shall regularly coordinate with Grantee for the purpose of developing and maintaining reasonable Access Facilities.

(4) Grantee's Responsibility for Equipment. Grantee is responsible for its headend equipment necessary for the playback of programming, including operation and maintenance. The Grantor is responsible for all on site equipment for broadcasting from any Origination Point.

(f) In the interest of efficiency and to avoid unnecessary redundancies, Grantor and Grantee agree to coordinate to the extent practicable the implementation and enforcement of the PEG access provisions of this Agreement with the County Commissioners of Allegany County (the "County"), who are party to separate cable television franchise agreement with Grantee.

SECTION 5.03. Compliance with Federal Law.

In accepting this Franchise Agreement, the Grantee expressly agrees that the commitments indicated in Section 5.02 are knowingly, voluntarily and intelligently entered into and any commitments and/or payments will not be deemed to be "Franchise Fees" within the meaning of §622 of the Cable Act (47 U.C.C. §542), and such commitments and/or payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the City by Grantee pursuant to Section 2.02 hereof; or (ii) part of the compensation to be paid to the City by Grantee pursuant to Section 2.02 hereof.

ARTICLE 6 REGULATION

SECTION 6.01. Franchise Regulation.

This Franchise shall be subject to regulation by Grantor in accordance with Applicable Law, including the provisions of Chapter 5.5.

SECTION 6.02. Force Majeure.

Neither Grantor nor Grantee shall be liable for damages or subject to penalty due to delay or failure to perform any duty imposed by this Franchise Agreement or by Chapter 5.5 if such delay or failure results directly or indirectly from circumstances beyond the control of such party. Within thirty (30) days of Grantee's discovery of the event causing such delay or failure, Grantee shall provide Grantor written notice describing the cause of the delay or failure and

estimating the period of time in which such delay or nonperformance will be cured.

SECTION 6.03. Rate Regulation.

If Grantor is permitted under federal and/or State law to regulate the rates charged by Grantee, and if Grantor elects to so regulate, Grantor shall establish reasonable procedures consistent with due process and Applicable Law and follow those procedures before so regulating.

SECTION 6.04. Subsequent Regulatory Authority.

To the extent any Applicable Law may in the future may (a) permit the Grantor to regulate any fee, charge, deposit, or any term or condition with respect thereto; or (b) permit the Grantor to increase the Franchise Fee or the rate thereof; or (c) permit the Grantor to assess the Franchise Fee against items of categories of items, or expand the authority of Grantor in any other way or manner, the Grantor shall not be estopped or prohibited from so doing by any provision of this Agreement, or by virtue of having granted a Franchise to the Grantee, or by the existence hereof.

**ARTICLE 7
MISCELLANEOUS**

SECTION 7.01. Entire Agreement; Modification; Interpretation.

(a) This Agreement constitutes the entire agreement of the parties with respect to the subject matter described herein, and may not be changed or modified except by agreement in writing signed by the parties.

(b) The Franchise granted under the terms and conditions of this Agreement shall be consistent with Applicable Law. In the event of conflict between this Agreement and the terms and conditions on which the City can grant a franchise or the terms and conditions of any law rule or regulation adopted or enacted after the Effective Date hereof by the City, said terms and conditions shall control over those of this Agreement; provided, however, that the terms and conditions of this Agreement may not be affected by any City law, regulation, or rule enacted or adopted by the City after the Effective Date of this Agreement unless (1) the content of the law, regulation, or rule was not permitted to be enacted as of the Effective Date; or (2) the law, regulation, or rule is of general applicability; or (3) in the exercise of its police power, the City finds that an emergency exists constituting a danger to health, safety, property, or general welfare; or (4) the exercise of the City's police power is mandated by law; or (5) the law, regulation, or rule, deals with a change the right to make, enact or exercise has been specifically preserved herein; and provided, further, that nothing in this Agreement shall be interpreted to prevent the City from at any time assessing, charging, or collecting any fee, tax, assessment, charge, or extraction of any kind or nature whatsoever from or against the Franchisee whether or not the authority to assess, charge, or collect such fee, tax, assessment, charge, or extraction may now or hereafter exist, including, but not limited to, the assessment of the Franchise Fee against information, telephony, or communication services, including fees charged for Internet service, should the same now or hereafter be subject to the right of a franchising authority to assess and collect.

SECTION 7.02. Captions.

Section titles in this Agreement are solely for convenience and reference, and are not intended for interpretation or construction of this Agreement.

SECTION 7.03. Governing Law and Venue.

This Agreement shall be governed, construed and interpreted by, through and under the laws of the State of Maryland, without regard to its conflicts of laws principles. Venue for any action arising hereunder shall be filed, heard, and determined in the federal courts located in Baltimore City, Maryland, or in State courts located in Allegany County, Maryland.

SECTION 7.04. Severability.

If any provision in this Agreement or the application thereof cannot be enforced to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law. The invalidity, illegality, or unenforceability of any term or provision of this Agreement shall not affect or limit the validity, legality or enforceability of any other term or provision hereof.

SECTION 7.05. Non-Waiver.

No indulgence, waiver, election or non-election by the Grantor under this Agreement shall affect Grantee's duties and liabilities hereunder.

SECTION 7.06. Assignment.

The assignment of Grantee's rights, duties and responsibilities under this Agreement is subject to the provisions of Chapter 5.5.

SECTION 7.07. Authority.

Each person executing this Agreement on behalf of any party hereto warrants that he or she has the right and authority to execute this Agreement, and that all the procedures and approvals that are necessary and required to enable him or her to execute properly this Agreement, and to bind the person or entity whom he or she represents in accordance with the terms hereof, have been followed and secured. Each Party agrees to execute and deliver all documents and to perform all further acts as may be reasonably necessary to carry out the provisions of this Agreement.

SECTION 7.08. Competitive Equity.

The Grantee acknowledges that the Grantor has and reserves the right to grant additional franchises to provide Cable Services within the Franchise Area. No franchise so granted shall contain terms or conditions more favorable or less burdensome to the additional franchisee than the material terms and conditions contained herein are to the Grantee to the extent, and only to the extent, that the item, matter, service, provision, or requirement to which such term or condition relates in such additional franchise is comparable to the item, matter, service,

provision, or requirement herein. If any such additional franchise contains any term or condition which the Grantee believes is more favorable or less burdensome, as the case may be, than the comparable term or condition contained herein, Grantee shall notify the Grantor in writing within ninety (90) days of the effective date of such additional franchise and request that the Grantor make a determination with respect thereto. Grantor shall make a determination with respect thereto within ninety (90) days after receipt of notice from the Grantee. If the Grantor determines that the term or condition contained in the additional franchise is comparable and is more favorable or less burdensome to the additional franchisee than the term or condition contained herein, Grantor and Grantee shall enter into negotiations to address and reconcile such difference. If no agreement is reached within ninety (90) after the determination by the Grantor is made, the term or condition contained herein shall remain in effect and Grantee shall have the right to exercise any legal remedies available to it under Applicable Law, including a legal challenge to the Grantee's determination.

[SIGNATURES OF THE PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Cable Television Franchise Agreement the date and year first above written.

GRANTOR:

MAYOR AND CITY COUNCIL OF CUMBERLAND

ATTEST:



By: Lee Fidler

GRANTEE:

ATLANTIC BROADBAND PENN, LLC

By:

Edward T. Holleran Jr

Name:

Title:

EDWARD T. HOLLERAN JR
PRES & COO

(Corporate Seal)

Date:

JULY 23, 2008

STATE OF MARYLAND
ALLEGANY COUNTY

The foregoing instrument was acknowledged before me on July 23, 2008, by Edward T. Holleran Jr, known or sufficiently identified to me to be the President & CEO (title), of Atlantic Broadband Penn, LLC, on behalf of the Grantee.

Laurie A. Monahan
Notary Public

Exhibit A

City of Cumberland Cable Television Franchise Agreement

Franchise Fee Payment Worksheet

Within sixty (60) days of this Franchise Agreement, Grantor and Grantee shall agree on the format of the Franchise Fee Payment Worksheet to identify sources of revenue and verification of payments to Grantor.

[Note: This is for Illustration Purposes Only]

REVENUE SOURCE	NUMBER OF SUBSCRIBERS	GROSS REVENUE	5% FRANCHISE FEE	YTD
Installation				
Basic Service				
Premium Channels:				
Pay-Per-View				
Remote Control				
TOTAL				

Grantee must periodically update the list of services contained on the Worksheet to the extent permitted under the Gross Revenue definition of the Franchise Agreement. Material failure to do so will not relieve the Grantee of the requirement to pay franchise fees on any services that are actually provided.

Exhibit B

Channel Line Up

This is for demonstrative purposes only. Grantee may modify the Channel Line Up throughout the term of the Franchise Agreement consistent with the notice provisions of the Agreement.

LIMITED SERVICE

- 2 TV Guide
- 3 WDCA-MY (Washington)
- 4 ION
- 5 WTTG-FOX (Washington)
- 6 WNPB-PBS (Morgantown)
- 7 WJLA-ABC (Washington)
- 8 Photo Classifieds
- 9 WUSA-CBS (Washington)
- 10 WDCW-CW (Washington)
- 11 WWPB-PBS (Hagerstown)
- 12 WHAG-NBC (Hagerstown)
- 13 WIZ-CBS (Baltimore)
- 14 QVC
- 15 WTAL-IND (Hagerstown)
- 16 WTAJ-CBS (Altoona)
- 17 WTAC-NBC (Johnstown)
- 18 C-SPAN2
- 19 C-SPAN
- 20 Message Channel
- 21 Inspiration Network
- 22 Home Shopping Network
- 23 EWIN
- 98 WWCP-FOX
- 99 Jewelry TV

VALUE SERVICE

- 24 TBS
- 25 USA
- 26 TNT
- 27 Lifetime
- 28 VH-1
- 29 Spike TV
- 30 AMC
- 31 Fox Sports Net Pittsburgh
- 32 CNN
- 33 Headline News
- 34 Game Show Network
- 35 ESPN
- 36 ESPN2
- 38 ABC Family
- 39 Comedy Central

- 40 Oxygen
- 41 A&E
- 42 MTV
- 43 CNBC
- 44 BET
- 45 Animal Planet
- 46 The Travel Channel
- 47 MASN
- 48 TV Super Store/MASN
- 49 Trinity Broadcasting
- 50 The Discovery Channel
- 51 FX
- 52 FOX News Channel
- 53 The Disney Channel
- 54 Teen Disney
- 55 E!
- 56 CMT
- 57 Food Network
- 58 The Learning Channel
- 59 Cartoon Network
- 60 HGTV
- 61 G4techTV
- 62 The Weather Channel
- 63 Nickelodeon
- 64 Speed Channel
- 65 VERSUS
- 66 The Outdoor Channel
- 67 Bravo
- 68 MSNBC
- 69 Sci-Fi
- 70 The History Channel
- 71 The Golf Channel
- 72 TV Land
- 73 National Geographic
- 74 truTV
- 75 The Hallmark Channel
- 76 Style

DIGITAL SERVICE

- 100 Planet Green
- 101 Nick Too
- 102 Do-It-Yourself
- 103 Discovery Kids

104 Noggin
 105 The N
 106 BBC America
 107 Boomerang
 108 Nick Toons
 198 Soapnet
 199 Lifetime Real Women
 200 Turner Classic Movies
 201 IFC
 202 Lifetime Movie Network
 203 Women's Entertainment
 204 Military Channel
 206 MTV2
 207 MTV Espanol
 208 MTV Jams
 209 VH-1 Classic
 210 VH-1 Soul
 211 CMT Pure Country
 212 Great American Country
 213 MTV Hits
 215 VHUno
 220 Blue Highways TV
 300 The Science Channel
 301 Discovery Health
 302 Discovery Times
 303 History International
 304 Fit TV
 305 Biography
 306 ESPNU
 307 ESPN News
 308 ESPN Classic
 309 NFL Network
 310 Fuel
 311 TVG-Horse Racing
 312 The Sportsman Channel
 313 CCTV
 314 Bloomberg
 600 Starz
 601 Starz Edge
 602 Starz InBlack
 603 Starz Kids and Family
 604 Starz Cinema
 605 Starz Comedy
 631 Encore
 632 Encore Action
 633 Encore Mystery

634 Encore Love
 635 Encore Drama
 636 Encore Westerns
Digital PPV
 800 iNDEMAND Previews
 801- iN DEMAND
 807
Digital adult PPV
 894 x
 895 Club Jenna
 896 SPICE XCESS
 897 fresh!
 898 shorteez
 899 Playboy
Digital music
 901 Sounds of the Season
 902 Today's Country
 903 Classic Country
 904 Bluegrass
 905 Hip-Hop and R&B
 906 Classic R&B
 907 R&B Soul
 908 R&B Hits
 909 Rap
 910 Metal
 911 Rock
 912 Arrogant Rock
 913 Classic Rock
 914 Adult Alternative
 915 Alternative
 916 Retro Active
 917 Electronica
 918 Dance
 919 Lite Hits
 920 Adult Top 40
 921 Hit List
 922 Kidz Only
 923 Party Favorites
 924 Showcase
 925 90's
 926 80's
 927 70's
 928 Solid Gold Oldies
 929 Smooth Jazz
 930 Jazz
 931 Blues

932 Reggae
 933 Soundscapes
 934 Easy Listening
 935 Big Band & Swing
 936 Singers & Standards
 937 Show Tunes
 938 Contemporary Christian
 939 Gospel
 940 Classical Masterpieces
 941 Light Classical
 942 Pop Latino
 943 Musica Urbana
 944 Salsa y Merengue
 945 Mexicana
 946 Opera

782 ESPN2 HD
 783 Outdoor Channel 2 HD
 784 HD Theater
 785 A&E HD
 786 Discovery HD
 787 Animal Planet HD
 788 TLC HD
 790 TBS HD
 791 HBO
 792 Cinemax
 793 Starz HD
 794 Showtime HD

* Requires subscription to HBO/Cinemax.

OPTIONAL SERVICES

HBO

400 HBO
 401 HBO 2
 402 HBO Signature
 403 HBO Family
 406 HBO Latino

Cinemax

450 Cinemax
 451 MoreMAX
 452 ActionMAX

Showtime

500 Showtime
 501 Showtime Too
 502 Showtime Showcase
 503 Showtime Extreme
 504 Showtime Beyond
 505 FLIX
 550 The Movie Channel
 551 TMC Xtra

HDTV

769 MASN
 771 WWPB-PBS
 772 TNT HD
 773 WTTG-FOX
 776 WUSA-CBS
 777 WJLA-ABC
 778 Disney HD
 780 NFL Network HD
 781 ESPN HD

Exhibit C

City of Cumberland Cable Television Franchise Agreement

City Sites to Receive Basic Cable Television Service

- | | | |
|----|--------------------------|----------------------|
| 1. | Public Safety Building | 20 Bedford Street |
| 2. | City Hall | 57 N. Liberty Street |
| 3. | Municipal Service Center | 215 Bowen Street |
| 4. | Station # 2 South End | 411 Race Street |
| 5. | Station #3 East Side | 311 Frederick Street |
| 6. | HRDC/Senior Center | 19 Frederick Street |

In the event of relocation of any of the City facilities listed in this Exhibit C during the term of the Franchise Agreement, Grantee shall provide Basic Cable Television Service to the new Site pursuant to Section 5.01(b) of the Franchise Agreement.